



STATE OF DELAWARE

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June 17, 2016

**MEMORANDUM**

TO: The Chair and Members of the Commission

FROM: Shona Marshall, Public Utility Analyst 

SUBJECT: IN THE MATTER OF THE APPLICATION EVERYDAY ENERGY, LLC DBA ENERGY REWARDS F/K/A FTR Energy Services, LLC FOR A CERTIFICATE TO PROVIDE ELECTRIC SUPPLY SERVICES WITHIN THE STATE OF DELAWARE (SUBMITTED FEBRUARY 20, 2015; FILED MARCH 22, 2016) - PSC DOCKET No. 15-0711

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**Background**

On February 20, 2015 Everyday Energy, LLC DBA Energy Rewards (the "Company" or "Energy Rewards") F/K/A FTR Energy Services, LLC submitted an application (the "Application") with the Delaware Public Service Commission (the "Commission") for an Electric Supplier Certificate ("ESC") to provide electric supply services in the State of Delaware pursuant to §1012 of the Electric Utility Restructuring Act of 1999, 26 *Del. C.* §1001 - §1020 (the "Act") and 26 *Del. Admin. C.* §3001, the Commission's Rules for Certification and Regulation of Electric Suppliers (the "Supplier Rules").<sup>1</sup>

**Application**

The Company's original filing was submitted on February 20, 2015 but the submitted Application did not meet the minimum filing requirements (MFR's). In a letter dated March 26, 2015, Staff requested the Company file a Certificate of Good Standing from the Delaware Secretary of State that it is legally authorized and qualified to do business in the State of Delaware issued within the last 12 months, financial statements that have been certified within the last 12 months, a description of investigative actions taken against the Company related to its sales and marketing, including remedies and prevention measures in place to protect Delaware customers. Follow up documentation was received from the Company on April 29, 2015 and September 15, 2015. On January 15, 2016, Staff received confirmation that the Company intends to provide electric supply services within the state of Delaware, as opposed to brokering supply services, which their application stated. A subsequent review determined that additional information would be required to satisfy the Application's MFR's for an electric supplier. On February 23, 2016, Staff requested an updated business license, documentation confirming fictitious name filings had been filed in each county the Company intends to do business within, updated Officer certified financial statements, proof of the Company's possession of \$100,000 in

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<sup>1</sup> Unless otherwise noted, all references to capitalized terms are set forth in the Act and/or the Supplier Rules.



liquid assets in excess of liabilities, and minor changes and/or clarifications to its customer contract. The Company's response dated March 14, 2016 provided all of the requested documents, except for financial statements that were in the process of being audited. Certified financial statements were received March 18, 2016. This information satisfies the MFR's for this Application.

## **Review and Analysis**

### **Authority to do Business in Delaware**

The Company is a limited liability company formed under the laws of the state of Nevada. The Company provided proof issued by the Delaware Secretary of State that it is legally authorized and qualified to do business in the State of Delaware issued April 1, 2015 and renewed March 14, 2016.

### **Resident Agent**

The Company supplied the contact information for a Delaware Registered Agent listed in the application as Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

### **Compliance with Regional Requirements**

The Company provided proof of PJM membership. The Company provided a copy of the FERC approval as a marketer.

## **Financial, Operational, Managerial and Technical Ability**

The Company provided a copy of the Balance Sheet and Income Statement for the periods December 2013-December 2015 as indicia of financial capability under Section 2.1.1.5.1 of the Supplier Rules. Staff believes that the confidential financial statements show substantial evidence of the Applicant's ability to provide electric supply services in the State of Delaware.

The Company anticipates serving Residential, Commercial, and Industrial customers for the sale or purchase of electricity throughout the State of Delaware. The Company's application states that it is authorized to do business in the states of California, Illinois, Indiana, New York, Ohio, and Pennsylvania. Staff confirmed that the Company is authorized to do business in those states by conducting an internet search of the Secretary of State Websites of the above listed states. The Company is presently licensed to provide gas supply services in California, Illinois, Indiana, New York, Ohio, and Pennsylvania. The Company is licensed to provide electric supply services and aggregator services in Connecticut, Illinois, New York, Ohio, and Pennsylvania. The Company is a subsidiary of Crius Energy, LLC. Crius Energy, LLC ("Crius") formed when Regional Energy Holdings, Inc. ("REH") combined with Public Power, LLC in 2012. The Company's listed affiliates includes: Cincinnati Bell Energy, LLC, Fairpoint Energy, Public Power, LLC, Public Power & Utility, Inc., Public Power & Utility of Maryland, LLC, Public Power & Utility of New Jersey, LLC, Viridian Energy, LLC, Viridian Energy NY, LLC, Viridian PA, LLC, and Viridian Network, LLC.

During Staff's review of the Company's practices, Staff discovered settlements and investigations conducted by the Utility Commissions of three states: Pennsylvania, Maryland, and Connecticut, related to sales and the marketing practices of other companies under the leadership of one or more of its officers. The investigations alleged practices of "slamming", unauthorized enrollments, and "bait-and-switch" schemes. Staff requested summaries of each pending settlement and investigation, as well as steps taken to rectify the problems alleged. The Company submitted the requested information and identified strategies enacted to prevent the alleged acts from re-occurring.

In the Company's response to Staff's inquiry, Public Power was investigated by the Bureau of Investigations and Enforcement ("BIE") of the Pennsylvania Public Utility Commission ("PPUC") in Docket No. A-2009-2143245. In July 2011, the investigation uncovered unauthorized enrollments conducted by a third party telemarketer due to a data entry error. Upon discovery, the Company collaborated with



the utility to rescind the transfers. On December 19, 2013, the PPUC unanimously approved a settlement of \$64,450 plus customer refunds of \$22,168.68.

Crius took over management of Public Power, LLC in January 2013 and made the decision to discontinue a legacy product. The BIE of the PPUC opened an investigation to determine whether customers that had enrolled in the legacy product had received the full benefit of the product. Public Power, LLC conducted an internal investigation and determined that 50 customers remained on the legacy product and were not being monitored. Public Power proactively issued \$6,558.21 in customer refunds. In October of 2015, Public Power, LLC entered into a settlement agreement of \$72,500 due to operational oversight. The agreement still needs to be approved by the PPUC.

Connecticut Public Utilities Regulatory Authority ("PURA") launched Docket No: 11-10-06 in order to investigate complaints lodged against Public Power, LLC in October of 2011. The complaint alleged that Public Power charged rates in excess of its contracts. Although PURA did not find any evidence supporting the customer complaints, Public Power and PURA entered into a settlement agreement. Under the terms of the agreement, which was submitted to PURA on June 28, 2012, Public Power would make a charitable contribution of \$6,000 in lieu of a civil penalty. The settlement was formally approved on May 15, 2013.

In February 2013, PURA began investigating enrollment complaints received in 2012 in Docket No. 13-02-08. PURA investigated whether or Public Power, LLC engaged in any unfair or deceptive trade practices. In January of 2016, PURA noted that Public Power, LLC had instituted new protocols and policies to improve and monitor operations. PURA also noted that Public Power, LLC had largely complied with applicable statutes and regulations. PURA assessed a penalty of \$13,000 for the third party verifications of the three customers and the general practice of documenting complaints.

The Maryland Public Service Commission ("MPUC") filed a complaint against Viridian Energy PA, LLC ("Viridian") in Case No. 9255 (Order No. 84959) in January 2011. The MPUC alleged that Viridian's independent contractors had violated the Maryland customer protection rules and mislead customers in late 2010. In June of 2012, the MPUC assessed a civil penalty against Viridian in the amount of \$60,000, noting prior behavior. The MPUC also noted that the penalty was reduced because Viridian had strengthened its compliance program.

In Docket No. 09-04-15RE03, PURA issued a decision noting that it received consumer complaints against Viridian that alleged following the completion of previously enrolled contract agreements, customers were renewed to fixed rate contracts, without consent and authorization. Customers also alleged that cancellations that occurred during the renewed contract period were assessed early termination fees. In its response, Viridian indicated that the company is in compliance with Connecticut General Statute §16-245o(h)(8), that allows auto-renewed fixed rate contracts and the assessment of early termination fees on contracts. In August of 2015, PURA issued their final decision. Viridian was found to have made a good faith effort to comply with the regulations and acknowledged the need for PURA to consider establishing industry-wide standards to which all licensed electric suppliers uniformly apply Connecticut General Statute §16-245o(h)(8). PURA did request that Viridian refund all early termination fees where the exact date of cancellation from the customer could not be determined. In response, Viridian refunded all of the early termination fees collected from the 121 customers who cancelled contracts that auto-renewed as a gesture of goodwill.

In Docket No. 12-109, Viridian applied for an ESC before the Commission. Prior to Staff submitting a recommendation on the application, Staff discovered Case No. 9255 before the MPUC. At the Commission Meeting that took place on July 3, 2012, Jan Fox, Vice President and General Counsel for Viridian and Betsy Webb, Vice President of Regulatory Affairs appeared by phone. Ms. Fox and Ms. Webb fielded questions regarding the nature of the investigation, Viridian's response to the incident, and the quality control features instituted as a result of the final decision of the MPUC. In response to



the MPUC's Case No. 9255, Viridian created Viridian University in July of 2011, an online training and certification system. Independent contractors who fail to become certified through Viridian University cannot enroll customers or sell their services. Viridian also created V Talk, a weekly newsletter for associates with a section dedicated to compliance. Also, an Associate Compliance Council was created to address current issues and determine whether there is a need for development of; or updates to training and educational materials. Additionally, contractors are not allowed to produce their own marketing materials anymore. All materials are produced by the corporate office and distributed to contractors. There is a zero tolerance policy for materials produced for the purposes of false or misleading representation of products or services. On July 17, 2012, the Commission approved Viridian's application to provide electric supply services within the State of Delaware.

In response to Staff's inquiries regarding the Company's previous cases, Energy Rewards provided Staff with the summaries for each of the investigations found. Additionally, Staff requested a list of policies and procedures that have been implemented to prevent the occurrence of these issues in Delaware. In addition to Viridian University certification as a requirement for its independent contractors, Crius maintains a centrally located database of customers and rate plan information. Quality control tests are conducted on a weekly basis to ensure accuracy. Quality control meetings are held three times a week to discuss the results of the quality control tests that are performed. Energy rewards does not plan to utilize third part outbound telemarketing. The Company will market through online digital marketing, inbound warm transfers, and direct mail inserts in Comcast bills. The Company believes that these actions will alleviate any concerns raised in previous cases regarding slamming, unauthorized enrollments, and bait-and-switch marketing. The Company has also made changes to its Delaware sales contracts and will not be charging early termination fees in the State of Delaware. Staff believes that this information shows substantial evidence of the Applicant's operational ability to provide electric supply services in the State of Delaware.

The Application included a summary of the key operating personnel of the Company. Michael Fallquist, President/CEO, launched Regional Energy Holdings, Inc ("REH") in 2009 to manage a portfolio of energy service companies. In 2012, Crius Energy, LLC ("Crius") formed when REH combines with Public Power, LLC. Mr. Fallquist continues to serve as CEO of Crius. From 2008-2009, he served as COO of Commerce Energy. He was involved in various energy trading roles within the Macquarie Cook Energy Group in Australia from 2004-2008. Cami Boehme worked as Chief Strategy Officer for REH beginning in 2010. Ms. Boehme continues to hold that position for Crius where she is responsible for marketing, branding, and communications. From 2009-2010, she was partner and brand director of Advent Creative. Prior to this she founded Digital Slant and held the positions of President and Brand Director from 1998-2009. Roop Bhullar held the position of CFO at REH beginning in April of 2010. Following the formation of Crius, Mr. Bhullar retained the position of CFO and continues to operate in that capacity. Prior to this position, he held the position of Director of Finance for Commerce Energy from 2008-2010. He has also held the position of Finance Manager/Controller for King Country Energy in New Zealand from 2003-2006. Chaitu Parikh serves as the Chief Operating Officer for Crius Energy's retail energy sector. He has 16 years of experience in the retail energy industry working for companies such as: MXenergy serving in the positions of President, CEO, EVP, and CFO; The New Power Company as Vice President and Corporate Controller; AES Power Direct, LLC & Titan Energy Inc. as CFO and Vice President of Finance; and Alliance Gas Management, Inc. as CFO and Vice President of Finance. Christian McArthur currently holds the position of Executive Vice President of Procurement for Crius Energy and has over ten years of experience in energy trading, procurement, hedging, and forecasting. He previously held the position of Senior Vice President of Supply Operations at Just Energy from 2003-2013. Barbara Clay is EVP and general counsel for Crius Energy and has over 15 years of legal experience. She has worked for MasterCard Worldwide and the firm of Boies, Schiller & Flexner, LLP.



#### Surety Bond

The Company did provide documentation of its financial guarantee bond with Westchester Fire Insurance Company in the amount of \$50,000 for the term beginning 2/18/2015 and ending 2/18/2016. The Company has supplied a Parent guarantee from Crius Energy, LLC dated March 10, 2016 agreeing to honor all obligations incurred up to, and including \$100,000.

#### Verification of Application

The original Application contained a signed sworn verification of application with the signature of Barbara Clay. Subsequent filings to the Application have also been verified by Barbara Clay.

#### Consent to Jurisdiction

The Company consents to the jurisdiction of the Delaware courts.

#### Contracts

The Company provided a sample contracts for Residential and Small Commercial Retail Electric Customers to provide Electric Supply Service.

#### Statement of Criminal Activity

The Applicant stated that they have not been charged or convicted of any criminal activity nor have any of its principals or corporation offices. An internet review of the Company and its principal did not return any incidents of criminal activity.

#### Public Notice

The Company was advised that pursuant to Section 2.2 of the Supplier Rules, the Company is required to publish notice of its filing in two general circulation newspapers within the state of Delaware. The Company provided the appropriate affidavits of publication from each publication. Notice was published in the Delaware State News on January 29, 2016, and the News Journal on February 26, 2016. There were no interventions, protests, or comments filed in the docket within the 20-day notice period.

#### Legal Review

Staff submitted this Memo for review by the Attorney on June 1, 2016.

#### Staff Recommendation

Based on Staff's review and analysis of the Application, the Company has satisfied the requirements of the Act and the Supplier Rules. The Company has been very forthcoming in Staff's inquiries and resolved all outstanding issues. The Company has also heeded each of Staff's concerns and instituted changes to alleviate them. The Company gives no indication that issues, if any arise, will not be handled in a manner consistent with the efficiency displayed to date. The completed Application supports the Company's request for certification. Staff's review and analysis of the Application submitted by the company demonstrates substantial evidence of capability to render service based on the Company's financial, operational, managerial and technical abilities. Therefore, Staff recommends the Commission approve the Application.